ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No.

RECEIVED
DEC 20 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

WALTER POLOVCHAK and THE PEOPLE OF THE STATE OF ILLINOIS

Petitioners,

-against-

ANNA POLOVCHAK AND MITCHELL POLOVCHAK,

Respondents.

83-5951

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Based on the annexed affidavit of Walter Polovchak, Petitioner respectfully moves this Court for leave to proceed in forma pauperis and be relieved from the payment of fees.

Dated: December 20, 1983.

Julian E. Kulas, Esq.
Henry Mark Holzer, Esq.
2329 West Chicago Avenue
Chicago, Illinois 60622
(312) 486-6645

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. _____

WALTER POLOVCHAK AND THE PEOPLE OF THE STATE OF ILLINOIS

Petitioners,

-against-

ANNA POLOVCHAK AND MICHAEL POLOVCHAK,

Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

STATE OF ILLINOIS)
COUNTY OF COOK) ss.:

I, Walter Polovchak, being duly sworn, depose and say that I am the Petitioner herein; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I am sixteen years old, my parents are in the U.S.S.R. and I reside with my sister and cousin.

I am a high school student, and not employed. I have no income and no savings. I have no investments.

I have only a few personal possessions and my clothes.

Leave to proceed in forma pauperis was not sought below.

Walter Polovchak
Walter Polovchak

Subscribed and sworn to
before me this 19th
day of December, 1983.

Notary Public

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Petitioners,

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Respondents.

83-5951

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

Julian E. Kulas
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2329 West Chicago Avenue
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QUESTION PRESENTED

The Juvenile Court of Cook County, Illinois, found after a lengthy hearing that Petitioner Walter Polovchak was a "Minor In Need of Supervision" (a "MINS").

On appeal by Petitioner's parents, the Appellate Court of Illinois:

- Engrafted two brand new statutory provisos onto the MINS law;
- Used the MINS law as newly "interpreted" to evaluate the sufficiency of proof in the already existing Juvenile Court record;
- Concluded that there had been a failure of proof; and
- Simply dismissed the MINS petition.

In view of the Appellate Court's failure to remand and to afford Petitioner an opportunity to produce proof to satisfy the MINS law as newly "interpreted," was he denied due process of law within the principle of Saunders v. Shaw, 244 U.S. 217 (1917)?

OPINIONS BELOW

There was no opinion rendered by the Juvenile Court of Cook County, Illinois.

The opinion of the Appellate Court of Illinois is reported at 104 Ill. App. 3d 203, 432 N.E.2d 873 (1981) (see Appendix "A").

The opinion of the Supreme Court of Illinois is reported at 97 Ill. 2d 212, 454 N.E. 2d 258 (1983) (see Appendix "B").

JURISDICTION

The order of the Supreme Court of the State of Illinois sought to be reviewed was entered on May 27, 1983.

The order of that court denying Petitioner's petition for rehearing was entered on September 30, 1983.

Jurisdiction is invoked under 28 U.S.C. §§1257(3), 2101(c).

CONSTITUTIONAL PROVISION INVOLVED

The sole Constitutional provision involved in this appeal is the due process clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

Under the then Illinois law, one category of a MINS was a child "beyond the control of his parents." (ch. 37, §702-3).

After a lengthy hearing, the Juvenile Court judge found that Petitioner was beyond his parents control and that he was thus a MINS.

The Respondents appealed to the Appellate Court of Illinois, making a variety of arguments. Although they claimed that the statutory terms "beyond the control" were unconstitutionally vague, neither they nor any other party to the intermediate court appeal asked that the terms be construed or that any specific meaning be given them.

However, in its decision the Appellate Court, sua sponte, held that two brand new provisos were to be attached to "beyond the control" -- the minor's conduct had to be "seriously harmful" and point to "grave danger." Under the Appellate Court's decision, a key term of the Illinois MINS statute was not only thereafter to be subject to two entirely new provisos, but the previously made record in the Juvenile Court was retroactively to be examined by the Appellate Court to ascertain if the proof submitted under the pre-provisos meaning of "beyond the control" was sufficient to satisfy the post-proviso meaning.

The Appellate Court's examination of the Juvenile Court record failed the test, so the MINS petition was simply dismissed by the Appellate Court.

There was no remand. Petitioner never received an opportunity to offer proof to satisfy the MINS's law's new meaning and establish that he was beyond the control of his parents.

On Petitioner's appeal to the Supreme Court of Illinois, he raised the issue of the Appellate Court's failure to remand:

> The Appellate Court's application of the two "seriously harmful" and "grave danger" provisos to the facts already in the Juvenile Court record and the court's de facto dismissal of the MINS petition,without remanding and affording the State and Walter Polovchak notice and an opportunity to offer proof to satisfy those provisos, violated his Illinois and/or federal procedural due process rights.

The Supreme Court of Illinois wholly ignored the point, and nowhere in its 11 page opinion can any reference be found to Petitioner's remand-due process point.

Petitioner's petition for rehearing in the Supreme Court of Illinois stated that:

> ...this court's decision has embraced the action of the Appellate Court -- which necessarily includes that court's failure to remand. Yet, in this court's opinion, there is an utter failure to discuss -- let alone to lay to rest -- the profound constitutional implications of changing the law in mid-stream but disallowing any opportunity to meet the new standard with previously unoffered evidence. * * * With all respect, this court's passing observation at page 10 of its opinion -- that Walter and the State had an opportunity to put in evidence, and that "a full adjudicatory hearing was held" -- misses the point. Evidence <u>was</u> put in, a hearing <u>was</u> held -- <u>but on the old standard, not the new</u>. Thus, this court's decision should have dealt with the remand issue.

Petitioner had no better luck with his petition than he had with his appeal. The rehearing was denied, and the Supreme Court of Illinois never did address the remand issue.

REASONS FOR GRANTING THE WRIT

The instant petition should be granted because the highest court of a major state has ignored the clear mandate of the Fourteenth Amendment as propounded in a venerable, still vital decision of the Supreme Court of the United States.

In Saunders v. Shaw, supra, this Court held that:

> ...it was a violation of due process of law for a State Supreme Court to reverse a case and render judgment absolute, against a defendant who succeeded in the trial court, upon a proposition of fact that was ruled to be immaterial at the trial and concerning which the defendant had therefore no occasion and no proper opportunity to introduce rebuttal evidence.

(Hamling v. U.S., 418 U.S. 87,149-150 (1974), dissent of Justices Brennan, Stewart and Marshall).

The reason why remand was necessary in Saunders was explained in that case by Justice Holmes, who stated that since

> ...we do not see in the record an absolute warrant for the assumption [that remand "would be an empty form"]...[we] therefore cannot be sure that the defendant's rights are protected without giving him a chance

to put his evidence in. (Saunders v. Shaw, supra, at 639; see also Kelley v. Southern Pacific Company, 419 U.S. 318, 332 (1974), Pullman-Standard v. Swint, 102 S. Ct. 1781, 1791-2 (1982), Brinkerhoff-Faris Trust and Savings Co. v. Hill, 281 U.S. 673, 679-680 (1930) and Mathews v. Eldridge, 424 U.S. 319 (1976)).

The principle of Saunders, applied by this Court in Kelley and Pullman-Standard, seems to be clear: when appellate action changes the manner in which evidence would have been received in the trial court, a remand is necessary.[1] Here, although the Appellate Court virtually rewrote the "beyond the control" portion of the Illinois MINS statute, there was no remand.

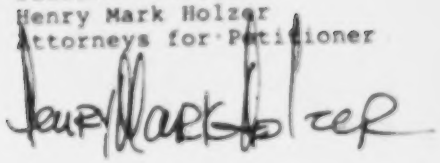
And that is the nub of the matter, giving rise to the central reason for why the petition should be granted: important federal procedural due process rights have been violated by the Illinois Appellate Court and by that State's Supreme Court, at least arguably. In our judgment, despite all the demands on its finite resources, this Court cannot allow to go unnoticed the manifest disregard of procedural due process requirements in the remand context.[2]

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1. Unless, of course, in Justice Holmes' words, remand "would be an empty form." That certainly would not have been the case in the Juvenile Court, where Petitioner's counsel, had they known that "beyond the control" required a showing of "seriously harmful" and "grave danger," could and would have presented evidence which would have more than satisfied those criteria.

2. Petitioner has reviewed the State's petition herein, and supports it fully.

Submitted by,
Julian E. Kulas
Henry Mark Holzer
Attorneys for Petitioner



December 20, 1983

APPENDIX A

THIRD DIVISION
DECEMBER 30, 1981

[redacted]

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

80-2857

IN THE INTEREST OF WALTER POLOVCHAK, a Minor.

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner-Appellee,

v.

ANNA POLOVCHAK and MICHAEL POLOVCHAK,

Respondents-Appellants.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY

HONORABLE JOSEPH C. MOONEY, JUDGE PRESIDING.

Appellate Court Held IX Lwoo

JUSTICE McGILLICUDDY delivered the opinion of the court:

On August 4, 1980, pursuant to the procedures set forth in the Juvenile Court Act (Ill. Rev. Stat. 1979, ch. 37, par. 701-1 et seq.), Walter Polovchak (Walter) was declared a minor in need of supervision and was adjudged a ward of the court. A dispositional hearing was scheduled for November 5, 1980. However, on November 5, 1980, in accordance with Supreme Court Rule 662 (Ill. Rev. Stat. 1979, ch. 110A, par. 662), Walter's parents, Michael and Anna Polovchak (the Polovchaks), appealed from the order of August 4, 1980.

On appeal, the Polovchaks raise the following issues: (1) whether the adjudication of wardship was an unconstitutional interference by the State into the sanctity and privacy of the family; (2) whether the Illinois minor in need of supervision (MINS) statute (Ill. Rev. Stat. 1979, ch. 37, par. 702-3) was unconstitutionally vague; (3) whether the adjudication of wardship proceedings violated their constitutional and statutory rights to a trial; and (4) whether the evidence adduced at the hearing was sufficient to adjudicate Walter a ward of the court. 1/

1/ The State argues that the Polovchaks should be estopped from bringing this interlocutory appeal pursuant to Supreme Court Rule 662 (Ill. Rev. Stat. 1979, ch. 110A, par. 662) because the Polovchaks agreed to the delay in the dispositional hearing. The rule provides in part:

"(a) Adjudication of Wardship. An appeal may be taken to the Appellate Court from an adjudication of wardship in the event that an order of disposition has not been entered within 90 days of the adjudication of wardship."

The State raised this same issue in its motion to dismiss this appeal. As the motion was denied by this court, we will not address that issue in this opinion.

Michael and Anna Polovchak and their three children arrived in the United States from the Soviet Ukraine in January of 1980. On July 14, 1980, Walter, then age 12, left his parents' home with his sister, Natalie, age 17. On July 18, 1980, Michael Polovchak enlisted the help of the Chicago police to find his son. Youth officers found Walter and Natalie at the apartment of their cousin, Walter Polovchak (the cousin). Petitions for adjudication of wardship in which Walter and Natalie were alleged to be beyond the control of their parents and thus minors in need of supervision were filed; and an adjudicatory hearing was held to determine whether the allegations in the petitions were supported by the evidence.

The adjudicatory hearing began with the entry of admissions by Walter and Natalie[2/] that they were minors in need of supervision. After the trial judge determined that the admissions were freely and voluntarily given, additional evidence was presented by the State and the Polovchaks.

Anna Polovchak testified that on July 14, 1980, at about 4 p.m., she returned home from work and saw Natalie and Walter removing their belongings from the family apartment. They were being helped by their cousin Walter and by two other men. Her son refused to tell her where he was going.

Walter Polovchak, the cousin, testified that he resided with the Polovchaks until July 12, 1980 when he moved into his own apartment. On Sunday, July 13, he drove Natalie and Walter to church and they spent the night at his apartment. The following day he returned to the Polovchak residence with his cousins and two friends to remove his belongings. At that time, Natalie and Walter proceeded to remove their belongings also. When Anna Polovchak

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2/ This appeal is not concerned with the finding adjudicating Natalie a ward of the court. She is no longer a minor under the Juvenile Court Act.

arrived, he told her that her son was not being forced to do anything and that Walter was going with Natalie. Walter and Natalie stayed with their cousin until Friday, July 18, the day the police arrived. The cousin admitted that he never informed his aunt and uncle where Natalie and Walter were living. He did not have the parents' permission to take their children to his apartment. He denied that he influenced Walter and stated that Walter wanted to stay with Natalie.

Natalie Polovchak testified that on Saturday, July 12, her father argued with her cousin and accused him of taking Walter away. The next day Natalie and Walter went to church with their cousin and she asked to be taken home so that she could get her belongings. Walter did not go with her. When she left her parents' apartment, her father followed her to the bus stop and said "ugly words." Natalie returned to her cousin's apartment and questioned her brother about his intentions. Walter told her that he did not want to return to his parents and that he wanted to stay with her.

Natalie further testified on cross-examination that her parents told her of their intention to return to the Ukraine. She did not want to accompany them so they did not apply for readmission for her. On several occasions her parents told her not to take Walter with her.

Walter Polovchak, the minor, testified that on July 13, 1980 he had gone to church with his cousin and Natalie. After church his cousin drove Natalie home to get some clothes. He stayed with his sister and cousin, at the cousin's apartment, on Sunday night and went with them to his parents' apartment on Monday. Walter testified that after he packed his belongings, his mother arrived. When she questioned him, he told her that she should not be concerned.

On cross-examination Walter stated that his cousin offered to help him if he did not want to return to the Ukraine. He

testified that he left his parents because he did not want to return to the Ukraine and because his parents did not talk to him. Walter stated that if he had not gone to live with his cousin he would have gone elsewhere. Walter testified that he would not return home if the petition for adjudication of wardship was dismissed.

Michael Polovchak stated that Walter had not presented any problems until he told Walter of his intention to return to the Ukraine. Michael testified that he wanted Walter to return to the Ukraine so that the family could be together, "for the love of a child," and because he was responsible for Walter.

Chicago Police Sergeant Leo Rojek, acting commander of Area 5 Youth, testified that on July 18, 1980 Michael Polovchak came to the police station with an interpreter and informed the police that his son was gone. Walter was found at his cousin's apartment and was brought to the police station. Walter said he had run away because he did not want to return to the Ukraine with his family. The police then telephoned the United States Immigration and Naturalization Service and Department of State and were instructed not to return Walter to his parents. Thereafter, Walter was processed as a minor in need of supervision.

The Polovchaks recalled Walter to the stand and questioned him regarding his life in the Ukraine. Walter testified that while he lived in the Ukraine his parents provided him with food and clothing and made sure he went to school. He did not like the Ukraine because "there aren't many things to be bought there." Walter reiterated that he left his parents to avoid returning to the Ukraine.

Doctor Wer Littner, a child psychiatrist, testified for the Polovchaks. After having been qualified as an expert witness, Dr. Littner was asked the following hypothetical question:

> "Dr. Littner, based upon your experience as a child psychiatrist, and based upon your experience

involving parent-child relationships, and based upon the following facts: that Walter's decision to leave home was based upon the fact that his parents had decided to go back to the Ukraine; that his cousin Walter was willing to allow him to live with him; that his cousin Walter and his sister Natalie assisted Walter in leaving his parents' home; since leaving Walter has resided with his 24 year old cousin and his 17 year old sister; that Walter's parents love him; that Walter's parents have never physically or emotionally harmed him; that Walter's parents' decision to return to the Ukraine is based on their desire to do what is best for the Polovchak family; that cousin Walter who lived with the Polovchaks told Walter that if Walter did not return, Walter could live with him.

Now, based upon those facts, do you have an opinion based upon a reasonable degree of medical certainty as to whether Walter's parents can control him despite Walter's desire to remain in the United States?"

Doctor Littner responded to this question by stating that, in his opinion, Walter's parents could control him since Walter's actions were indicative of defiance and rebellion rather than independent judgment. He stated that, if Walter's cousin and sister were not present, Walter may have locked himself in a room to manifest his rebellion against his parents. Doctor Littner testified that, based on the hypothetical, Walter was not a runaway because he made certain that his parents knew where he was. He stated that no twelve year old has the intellectual or emotional capacity to decide whether he should live with his parents and concluded that Walter's continued separation from his parents would be harmful.

On cross-examination Doctor Littner discussed the importance of mothering and fathering and said that a child should not be

removed from his parents absent physical or sexual abuse. He stated that a twelve year old could compare living standards but does not have the maturity to determine where he should live. Doctor Littner testified that he had not talked to Walter or the Polovchaks and did not know the background of their family relationships.

In rebuttal the State called Doctor Robert Bussell, Director of Clinical Services for the Juvenile Court. In response to a hypothetical question similar to the one posed to Doctor Littner, Doctor Bussell concluded that Walter would not be irreparably or emotionally harmed if he remained away from his parents. He testified that twelve year olds can make fairly good decisions concerning their welfare, what they want to eat and how they want to dress, and usually have some ideas about the direction of their lives. Doctor Bussell said that a twelve year old who has lived in the Ukraine and in the United States would be able to determine differences in quality of life and would be able to form a preference for one place over the other.

Doctor Bussell further testified that Walter's parents could control him despite Walter's desire to remain in the United States because of their physical differences but expressed some concern about their ability to rear Walter in the Ukraine. He had no opinion on the long-term effects on Walter if he was removed from his parents because he did not know Walter.

Following arguments, the trial judge entered a finding that Walter and Natalie were minors in need of supervision and adjudged them to be wards of the court.

Section 2-3(a) of the Juvenile Court Act (the Act) defines a minor otherwise in need of supervision as, inter alia, "any minor under 18 years of age who is beyond the control of his parents, guardian or other custodian." (Ill. Rev. Stat. 1979, ch. 37, par. 702-3(a).) Allegations that a minor is otherwise in need of supervision must be proven at an adjudicatory hearing by a

preponderance of the evidence. (Ill. Rev. Stat. 1979, ch. 37, pars. 701-4, 704-6.) If the court finds that the minor is a person in need of supervision and that it is in the best interest of the minor and the public that he be made a ward of the court, the court shall adjudge the minor a ward and proceed to a dispositional hearing. Ill. Rev. Stat. 1979, ch. 37, par. 704-8(2).

At proceedings under the Act, the minor and his parents have the right to be present, to be heard, to present evidence material to the proceedings, to cross-examine witnesses, to examine pertinent court files and records, and to be represented by counsel. (Ill. Rev. Stat. 1979, ch. 37, par. 701-20.) The Polovchaks argue that they were denied their right to a trial to contest the issue of whether Walter was beyond their control. They contend that the trial judge, in reliance on Walter's admission that he was beyond his parents' control, conducted a summary proceeding limited to the issue of whether there was a factual basis for the admission. The Polovchaks argue that the trial court did not weigh the evidence under the preponderance of evidence standard required by sections 1-4 and 4-6 of the Act (Ill. Rev. Stat. 1979, ch. 37, pars. 701-4, 704-6) and that, had the trial court applied the appropriate standard, it would not have concluded that Walter was beyond their control.

A review of the record shows that the trial judge did state that he was going to conduct a hearing to determine whether a factual basis for the plea existed. The record further shows, however, that the judge preceded this remark with a statement that the hearing was an adjudicatory hearing. Under the Act, the term "adjudicatory hearing" implies "a hearing to determine (a) whether the allegations of a petition *** that a minor is otherwise in need of supervision, *** are supported by a preponderance of the evidence***." (Ill. Rev. Stat. 1979, ch. 37, par. 701-4.) After Walter's admission was entered, the State did in fact proceed with the presentation of evidence and recognized that its burden of

proof was to be measured by the preponderance of the evidence standard.

We believe that the judicial comments highlighted by the Polovchaks should not be taken out of context. The record, viewed in its entirety, shows that a full and complete evidentiary hearing was conducted. All of the parties testified and were allowed to present witnesses and conduct thorough cross-examinations. The record does not reflect, nor do the Polovchaks contend, that they were prevented from presenting any evidence.

Clearly, no material facts were in dispute. The minor absented himself from the family residence, without his parents' consent and without informing them of his whereabouts. The basis for this absence was the minor's disagreement with his parents' decision to return to the Ukraine. At the conclusion of the hearing, the trial judge found that Walter was a minor in need of supervision because he was beyond the control of his parents. He adjudged Walter to be a ward of the court "based upon all of the evidence that I have heard." We believe that the trial judge weighed all of the evidence presented according to the required legal standards and conclude that the Polovchaks received a full, fair and proper hearing.

The Polovchaks also contend that the adjudication of wardship was improper under any standard of proof. They argue that Walter's single and isolated absence from the home was harmless misbehavior, insufficient to support a finding that he was beyond their control and insufficient to warrant state intervention into their family affairs.

It is well settled in this country that parents have the primary role of providing for the care and nurture of their children. (E. L. v. Matheson (1981), 450 U.S. 398, 101 S.Ct. 1164, 67 L.Ed.2d 388; Wisconsin v. Yoder (1972), 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15; In re Martin (1975), 31 Ill. App. 3d 288, 333 N.E.2d 711.) However, the State as parens patriae may restrict the parents' control and freedom in this regard where the welfare of the child is

at issue. (Prince v. Massachusetts (1944), 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645.) Acting within this legitimate interest, to provide for the care and guidance of minors subject to the Act, the State of Illinois enacted its Juvenile Court Act. (Stanley v. Illinois (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551.) A primary goal of the Act is to preserve and strengthen the minor's family ties whenever possible. Ill. Rev. Stat. 1979, ch. 37, par. 701-2.

In the case at bar the State contends that Walter was a minor subject to the Act because he was beyond his parents' control and because his welfare was in serious jeopardy. The State argues that Walter was a runaway and needed to be protected by the State from the considerable dangers existent to all runaways.

The term "beyond the control" is not defined in the Illinois Juvenile Court Act and has not been construed by the courts of this state. In California, a single act can establish that a minor is beyond the control of his parents or guardian (In re S. (1970), 12 Cal. App.3d 1124, 91 Cal. Rptr. 261) provided the minor's conduct is seriously harmful and not merely an exaggerated manifestation of intra-family parent-child conflict. (In re G. (1972), 28 Cal. App. 3d 276, 104 Cal.Rptr. 585.) The applicable statute in California provides for the adjudication of wardship of a minor "who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, *** or who is beyond the control of such person ***." (Emphasis added.) (Cal. Welf. & Inst. Code § 601 (West 1972).) Finding that the language of the statute was in the disjunctive, the court in In re S. held that repeated acts of disobedience were required under the first clause of the statute while a single act could be sufficient under the second clause. 3/

3/ Cf. N.Y. Family Court Act § 712(b) (McKinney 1975) (a person in need of supervision is, inter alia, a minor who is "habitually disobedient and beyond the lawful control of parent ..." (emphasis added)). As the New York statutory language is conjunctive, habitual misconduct is required in that state to sustain a petition alleging a person to be in need of supervision. See In re R. (1973), 73 Misc.2d 390, 341 N.Y.S.2d 998.

The Illinois MINS statute requirement that the minor be beyond the control of his parents is similarly worded to the California statute.[4/] Therefore, a single isolated act by a minor in Illinois can be sufficient to establish that the minor is beyond the control of his parents provided the minor's conduct is seriously harmful and points to grave danger. However, in the instant case Walter's action was not sufficiently serious to warrant a finding that he was beyond his parents' control.

It is undisputed that Walter committed a single act of misbehavior by absenting himself from the family residence for five days because he did not want to return to the Ukraine. Walter remained with his older sister and cousin at the cousin's apartment. Both expert witnesses agreed that, based on a hypothetical reflecting the facts in the case at bar, Walter was not beyond his parents' control. Doctor Littner testified that Walter's actions were acts of immature rebellion. In his opinion, Walter would not have manifested this rebelliousness by running away from home but for the fact that his cousin and sister provided him with alternative shelter. Doctor Russell, while expressing some doubt as to the ability of the Polovchaks to rear Walter in a country that he did not wish to return to, concluded, however, that the Polovchaks could physically control Walter.

We believe that Walter's health, safety and welfare were not jeopardized when he absented himself from the family residence. Walter was in no physical or mental danger as his needs were being met by his sister and cousin. Viewed in its simplest terms, the situation presented in the instant case is one of family discord caused by a child's disagreement with his parents' decision to return to their homeland. We have serious doubt as to whether the State would have intervened in this realm of family life and privacy had the parents' decision to relocate involved a move to

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4/ In Illinois, as in California, "beyond the control" is not preceded by phrases such as "persistently" or "habitually."

another city or state. The fact that the parents had decided to move to a country which is ruled under principles of government which are alien to those of the United States of America should not compel a different result.

Whether the minor may be entitled to political asylum in this country is an issue that should be decided by another forum. The Illinois MINS statute should not be utilized as a subterfuge to achieve such a result.

We hold that, under the facts presented, the trial court's determination that Walter was beyond the control of his parents was against the manifest weight of the evidence. Walter's single act of leaving the family residence after learning of his parents' decision to return to their homeland was an exaggerated manifestation of parent-child conflict (In re G.) and was not sufficient to bring him within the jurisdiction of the court. We further find that Walter, having gone to live with his sister and cousin, was not placed in a situation of grave danger such that he required care and guidance from the State.

As a result of these conclusions, we find it unnecessary to address the second evidentiary issue of whether the adjudication of wardship was in the best interest of Walter or the public.

Since we hold that Walter was not subject to the jurisdiction of the court, we need not consider the constitutional issues raised by the appellant. Illinois courts will consider constitutional issues only where necessary to a disposition of the case. Anundson v. City of Chicago (1970), 44 Ill. 2d 491, 256 N.E.2d 1; City of Chicago v. Abdullah (1979), 76 Ill. App. 3d 325, 395 N.E.2d 50.

For the foregoing reasons, we conclude that Walter Polovchak was not a minor in need of supervision pursuant to section 2-3(a) of the Juvenile Court Act. Therefore, the judgment of the circuit court of Cook County is reversed.

Reversed.

WHITE, J., concurs.

McNAMARA, J., dissents.

McNAMARA, J., dissents.

I respectfully dissent from the conclusion reached by the majority. In my view, the evidence adduced at the adjudicatory hearing was sufficient to establish that Walter was beyond the control of his parents, that he was in need of supervision and that he was properly made a ward of the court. A brief recitation of undisputed facts is sufficient to demonstrate the correctness of the juvenile court's decision.

After two attorneys, one appointed and one retained, entered admissions to the MINS petition, the juvenile court heard testimony that Walter, along with his sister who was also a juvenile, left home without his parents' permission. With his mother watching, Walter packed his belongings, including his bed, and moved out. He refused to disclose his destination and did not contact his parents after his departure. His parents knew that Walter was living in a cousin's apartment, but they did not know where the cousin lived. Four days after his departure, without having any contact with the boy in the interim, the parents asked the police to locate Walter. When the police found the boy, he refused to return home. At the hearing, Walter testified that he left home because no one talked to him and because he did not wish to return to the Ukraine. Walter also told the judge that he would continue to run away if he were returned home. After making its decision that Walter was in need of supervision, the trial court expressed its concern that some harm would befall Walter if he continued to run away.

The foregoing evidence does not reflect an isolated act of normal, adolescent rebellion. Rather it demonstrates a boy clearly beyond the control of his parents. While his mother stood by, apparently unable to control the situtation,

Walter packed and left home. Several days later, still unable to control the situation, the parents were compelled to seek out the authorities in order to locate the boy. When the police found Walter, he still refused to return home. And in court, Walter stated that he would leave again if forced to return home. Under the circumstances, the juvenile court's concern for Walter's welfare was justified and its finding that he was in need of supervision was amply supported by the evidence.

The majority opinion erroneously relies upon the California case of In re G. to support its holding that there was insufficient evidence that Walter is beyond his parents' control. The reviewing court in In re G. did not make the general finding that the child was not beyond his parents' control but rather, held that the trial court's erroneous restriction of questioning regarding to whom the lack of control could be attributed raised a question as to the applicability of one of two provisions in California's juvenile code. California law draws a dichotomy between children beyond parents' control due to the fault of the child, and children beyond the parents' control due to the fault of the parents. The In re G. case solely involved the issue whether the minor fell within the purview of the former section. Evidence had been presented that the minor struck his mother and then returned home past curfew. The trial court stated that questions were raised pertaining to the allocation of fault for the lack of control, but held that the child fell within the meaning of the former statutory provision. Unlike the law of California, our Illinois Juvenile Code creates one classification for children who are beyond their parents' control, and despite the allocation of fault, such children are deemed minors "otherwise in need of supervision." Applying the single standard of the

Illinois statute, the evidence clearly shows that Walter was beyond his parents' control within the meaning of Section 2-3 of the Act.

The suggestion that the juvenile court proceedings were a subterfuge to prevent Walter's return to the Ukraine is unwarranted. It ignores the compelling evidence that he was beyond his parents' control. It also ignores the assertions of the conscientious trial judge that he wished to effect a reconciliation of the family. The majority opinion also hypothecates that no court intervention would have occurred if the family merely wished to relocate in another area of this country. The opposite is true. I am convinced that in a matter where a boy fled home under circumstances such as these but because his family was moving to another state, a juvenile court's decision that supervision over the child was required never would be disturbed by a reviewing court. I believe that the trial court's holding in the present case was wise, proper, and supported by the evidence.

Since I believe that the MINS statute is constitutional, I would affirm the adjudication of the juvenile division of the circuit court of Cook County and remand the cause for a considered determination of a proper disposition.

APPENDIX B

Docket Nos. 56552, 56572—Agenda 9—March 1983.

In re WALTER POLOVCHAK, Appellee and Appellant (The People of the State of Illinois, Appellant and Appellee).

JUSTICE UNDERWOOD delivered the opinion of the court:

On July 19, 1980, pursuant to a petition for adjudication of wardship, the circuit court of Cook County appointed a guardian *ad litem* for 12-year-old Walter Polovchak, and, over the objection of Walter's parents, Michael and Anna Polovchak (the Polovchaks) placed the boy in the temporary custody of the Illinois Department of Children and Family Services (DCFS). Walter was subsequently found to be a minor in need of supervision and adjudged a ward of the court under the Juvenile Court Act (Ill. Rev. Stat. 1979, ch. 37, pars. 702—3(a), 704—8). Temporary custody remained in DCFS with supervised visits arranged between Walter and his parents. Prior to the dispositional hearing, Michael and Anna Polovchak filed an interlocutory appeal pursuant to Rule 662 (73 Ill. 2d R. 662). A divided appellate court reversed (104 Ill. App. 3d 203), and we allowed the petitions of both the State and Walter for leave to appeal.

Michael and Anna Polovchak, and their three children, Natalie, age 17, Walter, and Michael, age 5, arrived in the United States from their homeland, the Ukrainian Soviet Socialist Republic, in January 1980. The family spent the first few weeks in Chicago with Mr. Polovchak's sister and her husband before moving to an apartment on the northwest side of Chicago with Mr. Polovchak's 24-year-old nephew, Walter Polovchak (cousin Walter). Although both parents apparently began working in Chicago, they decided, after a few months, to return to the Ukraine. Natalie decided that she did not want to return with her parents, and Walter, although initially undecided, determined that he, too, wanted to remain in this country. Mr. Polovchak did not challenge his daughter's decision; however, he was adamantly opposed to allowing Walter to remain in this country. Apparently there was considerable tension between cousin Walter and the Polovchaks, who believed that the cousin was encouraging their son to remain in this country.

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Cousin Walter secured another apartment and began moving, apparently on July 12. He and Natalie had had a

conversation prior to the move, and it was decided that Natalie would move with her cousin. Walter also told his cousin that he would be joining in the move. The parents were apparently aware of some of these arrangements because on Saturday night, July 12, there was a heated family argument during which Mr. Polovchak, who was quite upset, demanded to know why Natalie was taking his son away.

The next morning, pursuant to a prearrangement, cousin Walter met Natalie and Walter a block or two from the parents' apartment and the three went to church. After lunch, they returned to a point near the parents' apartment, and, while the two Walters waited there, Natalie went alone to the apartment to get some of her belongings. She and her father argued about Walter, and the father followed her to the bus stop. Walter and his cousin apparently saw the father approaching and left. Later that day, Natalie joined her brother and cousin at the latter's apartment, where the three spent the night.

The following day, July 14, Natalie, her brother and cousin, and two adult friends of cousin Walter's went to the parents' apartment with two vehicles. The parents were at work, but as Natalie and Walter began gathering their belongings, their mother arrived. She attempted to learn where they were taking her son but was rebuffed. Her son, speaking to her in Ukrainian, said something to the effect that she should not be concerned. Natalie and Walter spent the next four days at their cousin's apartment, and while no one informed the parents of their whereabouts, it is clear from the record that the Polovchaks knew that their children were together and with cousin Walter but did not know where his apartment was located. Cousin Walter contacted his attorney (who later became counsel for Natalie and Walter) on July 14 or 15.

On July 18, Mr. Polovchak went to a Chicago police station with an interpreter to attempt to find his son. According to a report filed by Sergeant Leo Rojek, Mr. Polovchak stated that Natalie had enticed Walter to run away from home rather than return to the Ukraine, and she was hiding him in cousin Walter's apartment. After apparently receiving a telephone number for cousin Walter's place of employment, the police ascertained his home address; they subsequently went to the apartment, located Walter, and took him back to the station.

After arriving at the station, Walter was asked why he

ran away from home. He responded that his father intended to return to the Ukraine, but that he wanted to stay in this country. The police then contacted the United States Immigration and Naturalization Service and the Department of State and were instructed by officials from the Department of State that Walter was not to be returned to his parents. The police also contacted a Cook County judge who recommended that Walter be detained overnight as a runaway and brought to juvenile court the following morning. At some point during the processing, Natalie and cousin Walter's attorney, whom the cousin had apparently retained to represent Walter and Natalie, arrived at the police station. Walter was processed as a minor in need of supervision and placed with his sister and their attorney at the latter's residence. Mr. Polovchak was told of the court date the following morning and advised that he and his wife would be transported to the hearing by the police.

A petition for adjudication of wardship was subsequently filed by a police officer, alleging that Walter Polovchak, age 12, was "beyond the control of his parents in that he did on/or about July 14, 1980 at 9:00 A.M. at Cook County, Illinois, absent himself from his home without the expressed consent of his parents, in violation of Chapter 37, Section 702—3a, Illinois Revised Statutes, 1979," and that it was in the best interests of the minor and the public that Walter be adjudged a ward of the court.

On July 19, Walter appeared in court with the retained attorney. Also present were an assistant State's Attorney, counsel for the subsequently appointed guardian *ad litem*, a representative of DCFS, a representative of the Immigration and Naturalization Service of the United States, several police officers, and the Polovchaks. The trial judge asked whether Walter was prepared to plead to the charge, and, after an off-the-record conference between the assistant State's Attorney and counsel for the guardian *ad litem*, the latter entered a denial on behalf of Walter. She also informed the court that she and the assistant State's Attorney had agreed to the appointment of a temporary custodian. The assistant State's Attorney advised the court that it was her understanding that the parents were not in agreement with the temporary custody arrangement.

The Polovchaks neither spoke nor understood English, they did not have an attorney, nor were they provided with counsel or a court-appointed interpreter. Walter's private attorney, who speaks Ukrainian, advised the court that

there were Ukrainian-speaking people in the courtroom, and a woman, whose status is not disclosed by the record, volunteered to interpret for the parents. Through the interpreter, the trial judge ascertained that Walter had been away from home since July 14, and that the parents wanted to take him home with them. The court informed the Polovchaks that Walter would be placed in the temporary custody of DCFS pending a social investigation by a probation officer and a full hearing to determine whether Walter was a minor in need of supervision and whether he would be removed or returned to the custody of his parents. The parents were also advised that they had the right to be represented by counsel and that they should return to court with their attorney on July 30. No evidence was taken at this hearing; despite the parents' opposition, an order said to be "by agreement" was entered appointing the Guardianship Administrator of DCFS temporary custodian. In addition, the following findings of fact were entered on a preprinted form: that probable cause existed to believe that Walter was a minor otherwise in need of supervision, and that Walter should be placed in custody, in a suitable place, pending a further hearing because it was a matter of immediate and urgent necessity for his protection, he had been away from home for five days, he had in open court stated that he would not remain with his parents if released, and on his own motion he requested the court to order protective detention.

A petiton was subsequently filed seeking to have Natalie Polovchak adjudged a ward of the court. The allegations of this petition were virtually identical to those contained in the previous petition on behalf of her brother. The hearing that followed on both petitions extended over a two-day period. All parties were represented by counsel, and several interpreters were present.

At the outset of the July 30 adjudicatory hearing, the trial court denied a motion by counsel for the Polovchaks to vacate the temporary custody order of July 19 on the grounds that it was not in compliance with the Juvenile Court Act. Over the objection of opposing counsel, the attorneys for Natalie and Walter then entered admissions on behalf of their clients "to the charges that they [were] minors in need of supervision." All four members of the Polovchak family, including Walter, subsequently testified through an interpreter. The court also heard testimony from cousin Walter, Sergeant Rojek, and two psychiatrists.

The evidence indicated that Walter left his parents' home without their consent and stayed with his sister and cousin for the next few days in the cousin's apartment and that he was motivated in doing so by his desire to stay in this country rather than return to the Ukraine. While both Natalie and cousin Walter denied that either influenced Walter's decision, it is clear that Walter's cousin had told Walter that he would help him if Walter decided not to go back to the Ukraine with his parents; it is also undisputed that Natalie, cousin Walter and his two adult friends assisted him in removing his belongings from his parents' home. Walter testified that had his sister and cousin not assisted him or allowed him to stay with them, he would have still left his parents' apartment and gone somewhere else.

Both the State and the Polovchaks presented psychiatric testimony. The two psychiatrists, Dr. Ner Littner and Dr. Robert Bussell, neither of whom examined Walter, testified in response to hypothetical questions which essentially incorporated the salient facts of this case. Neither expert believed that Walter was beyond the control of his parents. In addition, Dr. Littner, the Polovchaks' witness, stated his opinion that Walter's behavior was an immature act of defiance and rebellion rather than an independent judgment, and that the assistance of Walter's sister and cousin provided his actions with an aura of respectability or gave Walter a rationalization for rebelling against his parents. Further he stated that Walter was not a runaway nor did he engage in the type of behavior common to a runaway, who would ordinarily be certain not to let his parents know where he was going. Dr. Littner believed that, had Walter not been assisted by his cousin and sister, he may have manifested his disagreement with his parents by locking himself into a room and refusing to come out. The psychiatrists disagreed on whether a 12-year-old boy had the ability to make an independent judgment as to which country he preferred to live in; their opinions also differed on the extent of emotional harm that would result to Walter from a continued separation from his parents.

At the conclusion of the hearing on August 4, 1980, the trial court found both Natalie and Walter to be minors in need of supervision and also adjudicated them wards of the court. Thereafter, during a discussion of possible temporary dispositions, including Walter's return to his parents, the judge was told by the DCFS worker that Walter had threatened suicide if returned "home." The worker indi-

cated she would have so testified under oath, but the trial court denied a request that she be sworn. While the State attempts to rely on the alleged suicidal threats, we believe the references thereto are too nebulous for that purpose. There had been no reference to such threats in the initial appearance before the court or during the adjudicatory hearing. The later reference was neither under oath nor subject to cross-examination, and Walter neither testified, nor was he asked, about the matter. It is not entirely clear whether "home" was understood by Walter as the apartment of his parents or the Ukraine. Finally, the court had already announced its decision before the worker, who apparently neither spoke nor understood Ukrainian, volunteered the information.

On November 5, the date scheduled for the dispositional hearing, the Polovchaks filed notices of appeal from the wardship adjudications and the temporary custody orders. Natalie is no longer a minor under our juvenile act, and she is not involved in this appeal.

The United States Attorney for the Northern District of Illinois, at the direction of the Attorney General of the United States, has filed a "suggestion of interest" in this court advising us that, on July 19, 1980, the district director of the Immigration and Naturalization Service, with the advice of the Department of State, granted Walter Polovchak's petition for asylum. Walter's status was subsequently changed to permanent resident alien. We are informed that the Immigration and Naturalization Service has also entered a departure control order which prohibits the departure of Walter from the United States. While advising us that the United States has no direct interest in the legal issues presented concerning our State statute, the United States Attorney suggests that any decision regarding the final custody of Walter respect the supremacy of the obligations of the United States under the Refugee Act of 1980 (94 Stat. 109, 8 U.S.C. 1182 (1980)) and the international obligations of the United States under the United Nations Protocol Relating to the Status of Refugees. 19 U.S.T. 6224-29 (1968).

Both the State and Walter argue that the parents should have been estopped from taking an interlocutory appeal under our Rule 662. The appellate court denied the State's motion to dismiss the appeal on that ground, a decision with which we agree. It is unnecessary to lengthen this opinion by quoting or discussing the portions of the re-

cord which demonstrate that the charges that the appeal was "fraudulently" based, that the parents "deceived" the trial court or adopted dilatory tactics for the purpose of taking an appeal are unfounded. Suffice it to say that the delay between the date of the wardship adjudication and the date scheduled for the dispositional hearing resulted from a number of factors, some of which were directly attributable to the State and the minors. Too, we do not doubt that the multiple litigation and controversy surrounding this case have also adversely affected what should otherwise have been a prompt determination regarding Walter's custody. In fact, on the date scheduled for the dispositional hearing, he had been removed from the custody of his parents for 3½ months. Under the circumstances of this case, where the parents, but not the minor, were contesting the adjudication of wardship and the determination that their son was a minor in need of supervision, and an order of disposition had not been entered within 90 days of the adjudication of wardship, we hold that the parents properly invoked our Rule 662 to appeal (73 Ill. 2d R. 662).

The stated purpose of our Juvenile Court Act "is to secure for each minor subject hereto such care and guidance, *preferably in his own home*, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; *to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal* ***." (Emphasis added.) (Ill. Rev. Stat. 1979, ch. 37, par. 701—2(1); *People ex rel. Daris v. Vazquez* (1982), 92 Ill. 2d 132, 142-43.) Just as the Act severely limits the authority to hold a minor in custody (*People v. Woodruff* (1981), 88 Ill. 2d 10, 14), it quite clearly directs the court before whom the minor is brought to release the minor to the custody of his parents rather than prescribe detention or shelter care unless it is found that it "is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another, that he is likely to flee the jurisdiction of the court or that the minor was taken into custody under a warrant." Ill. Rev. Stat. 1979, ch. 37, pars. 703—4, 703—6.

While the original order removing Walter from the custody of his parents includes a finding that the order was a matter of immediate and urgent necessity for Walter's pro-

tection, evidence in the record simply does not support that finding. None of the witnesses present, the minor, the parents or anyone else able to give relevant testimony was examined. (Ill. Rev. Stat. 1979, ch. 37, para. 703—6.) Nor did Walter state, as the findings would seem to indicate, that he would not remain with his parents if released. Indeed, it is clear from the later proceedings that Walter's obstinance stemmed not from his opposition to being reunited with his parents but rather from his desire not to return to the Ukraine, an unlikely possibility, had the court released him to his parents, in view of the interest manifested by the Federal agencies. The factual allegation in the petition was that Walter had been away from home for five days without the expressed consent of his parents. Whether the court was aware, at the initial hearing, of the circumstances under which Walter left his parents' home or that he had been staying with his cousin and older sister, rather than at large in the city of Chicago, is also unclear since no one specifically advised the court, at least on the record, of these facts. It is, in our opinion, clear that, given the absence of evidence to support the finding required by statute, Walter should have been released to the custody of his parents, who were in the courtroom requesting permission to take their son home.

The statutory provision under which Walter was later adjudicated a minor in need of supervision then provided: "Those otherwise in need of supervision include (a) any minor under 18 years of age who is beyond the control of his parents, guardian or other custodian." (Ill. Rev. Stat. 1979, ch. 37, par. 702—3(a); the statute has since been amended by Public Act 82—969 (Minor Requiring Authoritative Intervention), approved Sept. 8, 1982, eff. Jan. 1, 1983.) The Act requires that an adjudicatory hearing be held to determine whether the allegations of the petition are supported by a preponderance of the evidence. (Ill. Rev. Stat. 1979, ch. 37, par. 701—4.) The decision of the trial court at that hearing should not be disturbed on appeal unless it is against the manifest weight of the evidence. See *In re Brown* (1981), 86 Ill. 2d 147, 152; *In re Stilley* (1977), 66 Ill. 2d 515, 520.

While this court has not previously construed the phrase "beyond the control" of one's parents, and the legislature has not further defined or explained that term in the Act, we agree with the appellate court that it seems manifest that the legislature could not have intended that

phrase to include an isolated act by a 12-year-old minor which poses no hazard to him or anyone else. Decisions in this court, while involving different issues, demonstrate that the initial determination that the minor was in need of supervision was predicated on the fact that he was incorrigible, a frequent runaway or his acts posed serious hazards to himself or others. (See *In re R.R.* (1982), 92 Ill. 2d 423 (minor tried to poison her mother and was beyond her parents' control); *In re Baker* (1978), 71 Ill. 2d 480 (minor repeatedly ran away from home); *In re Sekeres* (1971), 48 Ill. 2d 431, *appeal dismissed* (1972), 404 U.S. 1008, 30 L. Ed. 2d 656, 92 S. Ct. 691 (minor frequently absented herself from home); *In re Presley* (1970), 47 Ill. 2d 50 (allegations in original petition seeking to adjudicate minor otherwise in need of supervision or neglected were that she had absented herself from home for long periods of time without parental consent and on a specific date was forced by her mother and stepfather to leave home); *cf. In re G.B.* (1981), 88 Ill. 2d 36, *cert denied* (1982), ___ U.S. ___, 72 L. Ed. 2d 487, 102 S. Ct. 2041 (habitually truant minor); Ill. Rev. Stat. 1979, ch. 37, par. 702–3(b)); Pub. Act 82–969 (minor requiring authoritative intervention, eff. Jan. 1, 1983; see also *In re Snyder* (1975), 85 Wash. 2d 182, 532 P.2d 278 (evidence that minor was adamant about refusing to return home, had established a pattern of refusing to obey her parents, and, on two occasions, in effect, fled her home, was sufficient to support the finding of loss of parental power and control); *In re D.J.B.* (1971), 18 Cal. App. 3d 782, 96 Cal. Rptr. 146 (a finding that a minor is beyond the control of his parents may be predicated on a single act if sufficiently serious; evidence that minor left home without parental consent was not of such a nature as to be indicative of the loss of parental control); *In re Galvan* (La. App. 1980), 384 So. 2d 1000 (evidence that on two occasions minor left the home of his mother—the custodial parent—without consent and stayed with his father because his mother was planning to move the family to Texas or because he may have thought he would be sent to military school was insufficient to establish that the minor was habitually disobedient and was ungovernable by his mother or that he was a runaway child in need of supervision); *cf. In re Price* (N.Y. Fam. Ct. 1978), 94 Misc. 2d 345, 404 N.Y.S.2d 821.

Although the parties characterize the evidence differently and disagree as to its legal sufficiency, as the appel-

late court noted, no material facts were in dispute. With the help of his sister and cousin, Walter, a 12-year-old boy, left his parents' home without their consent and spent the next few days with his older sister at his cousin's apartment. This occurred during a time of considerable family tension regarding the Polovchaks' decision to return to their homeland. Neither psychiatrist, testifying in response to hypothetical questions based on these and other relevant facts, believed that Walter was beyond the control of his parents. We believe the appellate court correctly concluded that the trial court's decision was against the manifest weight of the evidence. Walter's actions, which can hardly be characterized as those of a runaway, and posed no hazard to him or anyone else, simply do not establish that he was beyond parental control.

The State argues, alternatively, that this court should remand for another hearing because Walter was not given the opportunity to present evidence that he was in need of supervision. Because the court indicated that it was going to conduct a hearing to determine whether there was a factual basis for the earlier admission entered by Walter, the State argues that Walter was limited in presenting evidence. Too, the State complains that, believing that there need only have been evidence to establish a factual basis for the admission, it may have been misled concerning the amount of evidence it was required to produce, and should therefore have another opportunity. We cannot agree. The record shows that neither the State nor Walter was prevented from presenting any evidence relevant to the determination of whether Walter was beyond his parents' control. A full adjudicatory hearing was held; Michael, Anna, Natalie and Walter Polovchak, cousin Walter and several other witnesses testified; each witness was fully examined by all parties; and, as the appellate court stated, the record establishes that the State recognized its burden and proceeded accordingly.

We have been advised that Michael and Anna Polovchak have returned to the Ukraine. It is apparent, therefore, that Walter cannot immediately be returned to his parents, even assuming the Federal orders prohibiting his departure from this country had not been entered. We, of course, have considered only the issues before us, and our holding that the evidence before the circuit court did not support its action is dispositive only of those proceedings. Considering that, so far as we are presently informed, Federal liti-

gation regarding the asylum and departure orders is still pending in the United States courts, we believe the appropriate disposition of this case is to remand it to the circuit court of Cook County with directions that it retain jurisdiction of Walter and this cause pending the return of Walter's parents, or either of them, to this country, in which event Walter's custody shall be given to the returning parents or parent. In the event that neither Michael nor Anna Polovchak shall return, the circuit court shall proceed in the manner it deems best suited to Walter's needs.

In view of our disposition here, we need reach neither the constitutional challenges nor the issue of whether the adjudication of wardship was in the best interests of Walter or the public.

For the reasons stated the appellate court's judgment reversing the circuit court is affirmed, and the cause is remanded to the circuit court of Cook County with directions to proceed in accordance herewith.

Affirmed and remanded, with directions.

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